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*Kevin L. Smith*

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of the supreme court,  
court of appeals and  
tax court

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

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No. 49A02-0709-CR-822

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Patricia Gifford, Judge  
Cause No. 49G04-0606-FB-114150

**May 27, 2008**

**MAY, Judge**

Bernardo Garcia appeals his convictions of battery, a Class C felony;<sup>1</sup> interference with reporting a crime, a Class A misdemeanor;<sup>2</sup> and battery by bodily waste, a Class A misdemeanor.<sup>3</sup> He argues the evidence of these offenses is insufficient because the victim's testimony is incredibly dubious. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Although Garcia is married, he dated Sirrenda Johnson and lived with her for approximately a year-and-a-half. Johnson decided to move out because Garcia "couldn't keep his hands off of me." (Tr. at 21.) Johnson has a baby boy, and she claims Garcia is the father. However, paternity has not been established, and Garcia claims Johnson sometimes says he is not the father.

On June 16, 2006, Johnson called Garcia because she wanted help picking up a baby bed from Wal-Mart. Garcia told her to come pick him up. When she arrived, she found Garcia had been drinking. Garcia acknowledges he had four or five beers. They went out to eat, and Garcia had more to drink. Johnson and Garcia got into an argument about Garcia's drinking.

Johnson and Garcia returned to Johnson's home. The baby was fussy, and Garcia told him to "shut the f\*\*\* up." (*Id.* at 27.) Johnson told Garcia not to talk to the baby like that and asked him to leave. Garcia grabbed the baby, ran into the kitchen, and threatened to throw the baby down and kill him.

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<sup>1</sup> Ind. Code § 35-42-2-1.

<sup>2</sup> I.C. 35-45-2-5.

<sup>3</sup> I.C. 35-42-2-6.

Garcia grabbed a knife from the kitchen and accused Johnson of sleeping with another man. He lunged toward her with the knife and complained that the knife was not sharp enough. He forced Johnson into the living room. Garcia jabbed her with the knife on her arm and her leg and asked her if it hurt.

Garcia wanted the title to Johnson's car. Johnson told him her mother had it. Garcia wanted her to call her mother and have her bring it over. Johnson decided she would call 911 and tell Garcia no one answered. However, before she started dialing, Garcia ripped the phone from the wall, yelling "no, no, no," and asking what she was going to do. (*Id.* at 34.)

Garcia then forced Johnson into the bathroom. While she was on her knees, Garcia grabbed her hair and told her to open her mouth. When she did, Garcia urinated in her mouth. Johnson vomited. Garcia allowed her to wipe her mouth and change her clothes.

About two hours after they arrived at Johnson's home, Garcia wanted them to leave and "act like nothing had happened, to walk out normal." (*Id.* at 36.) Johnson had the baby in her arms, and she took the opportunity to run across the street to a neighbor's home. Rebecca Collier's door was unlocked, and Johnson ran in "begging for help." (*Id.* at 76.) According to Collier, Johnson "was crying, she was shaking, she was gagging." (*Id.*) Collier gave Johnson her phone, and Johnson called 911. Johnson threw up again, and Collier gave her some water and mouth wash.

The officer who responded to Johnson's call apparently did not notice any injuries. Pictures were taken of Johnson's home, including vomit on the bathroom floor.

Detective John Moore interviewed Johnson on June 19, 2006, and pictures of her injuries were taken at that time. The knife was not recovered.

### **DISCUSSION AND DECISION**

In reviewing the sufficiency of the evidence, we do not reweigh the evidence or assess the credibility of the witnesses. *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). We consider the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. *Id.* We will affirm if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Id.*

Garcia argues Johnson's testimony is incredibly dubious. The "incredible dubiousity" rule applies when "a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence." *Id.* The rule is rarely applied and is appropriate only when the testimony is so inherently improbable or equivocal that no reasonable person could believe it. *Id.*

Garcia argues Johnson fabricated the allegations because she is jealous of his wife. He claims she ran into Collier's house, appeared shaken, called 911, and vomited all as part of her plan to frame him, and those actions therefore do not corroborate her story. The jury, however, heard evidence concerning the nature of their relationship and rejected his argument that Johnson fabricated the allegations out of jealousy.

Garcia has identified no portion of Johnson's testimony that is inherently improbable or equivocal. He argues the neighbors would have heard them arguing because the houses are close together in Johnson's neighborhood. However, Collier testified she rarely heard arguments from other homes. That the knife was not recovered

does not make Johnson's testimony incredibly dubious, nor does Garcia's claim he is a hardworking, law-abiding person.<sup>4</sup> A reasonable jury could believe Johnson's testimony, and we will not reweigh the evidence.

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.

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<sup>4</sup> Garcia also argues he "is not on an even playing field when denying allegations of abuse against a jealous woman with a motive to lie" because of his limited knowledge of the English language. (Appellant's Br. at 7.) Garcia was provided an interpreter, and he has made no argument the interpreter's services were inadequate. Garcia was able to testify in English at his trial.